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OFFICE OF PETITIONS

In re Application of :
Margaret E. Black :
Application No. 09/173,463 : DECISION ON PETITION
Filed: October 14, 1998 : UNDER 37 CFR 1.137(a)
Attorney Docket No. 240052.429 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 8, 2004, which, for the reasons stated below (and in the petition), is being treated as a petition under the provisions of 37 CFR 1.137(a) to accept an unavoidably delayed reply to the Office action of June 15, 2001.

The petition is granted.

This application became abandoned for failure to timely reply to the Office action of June 15, 2001, which set a three month shortened statutory period for reply. No reply having been received and no extensions of time having been timely submitted, this application became abandoned on September 16, 2001. A Notice of Abandonment was mailed on June 15, 2004.

Petitioner states that no reply was filed in view of the examiner's statement in an Interview Summary (a copy of which is attached to the instant petition), which states: "The finality of the Office Action dated June 15, 2001, has been withdrawn. A new Office Action will be sent." Petitioner further states that, by mid-December, when no Office action had been received, attorney David Parker conducted a telephone conference with the Examiner who stated that applicants did not need to reply to the June 15, 2001 Office action because a new Office Action would be issued shortly. Therefore, due to detrimental reliance on statements made by the Examiner, the failure to timely reply to the Office action of June 15, 2001 was unavoidably delayed.

The showing of record is sufficient to establish that unavoidable delay resulted in applicant's detrimental reliance on the statement by the Examiner in the Interview Summary that a new Office action would be issued and the reassurance by the Examiner thereafter on December 17, 2001 (the last date of the six month extendible period for reply) that no reply was required to be filed. Accordingly, the failure to timely reply is accepted as having been unavoidably delayed.

In view of the record in this case, the "Response" filed will be accepted as fulfilling the requirements of 37 CFR 1.137(a)(1).

In view of the treatment of this petition as one under 37 CFR 1.137(a), which requires a fee of \$110, the \$1,330 (less \$110 for the petition under 37 CFR 1.137(a)) fee submitted for the petition under the unintentional provisions of 37 CFR 1.137(b) will be refunded to petitioner's deposit account. Additionally, extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. In view thereof, the extension of time fee submitted is unnecessary and will be refunded to petitioner's deposit account as authorized.

Inquiries concerning this decision on petition may be directed to the undersigned at (703) 305-8680.

This application file is being forwarded to Technology Center AU 1652 for such action as the nature of the case may require.



Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy